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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

LESTER JACKSON ROOKS III,

Defendant and Appellant.

E045482

(Super.Ct.No. FMB008195)

OPINION

APPEAL from the Superior Court of San Bernardino County. Rodney A.

Cortez, Judge. Affirmed.

Dennis L. Cava, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, and James D. Dutton and Melissa Mandel, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant, Lester Jackson Rooks III, pled guilty to (1) continuous sexual abuse of a child under the age of 14 (Pen. Code, § 288.5, subd. (a)), and (2) willfully and lewdly committing a lewd or lascivious act upon a child under the age of 14 by use of force, violence, duress, menace, or fear of immediate and unlawful bodily injury (Pen. Code, § 288, subd. (b)(1)). The court sentenced defendant to state prison for a term of 24 years. Defendant contends the trial court erred by denying his motion to suppress evidence because the first search warrant was exploratory, and all evidence recovered after that warrant was fruit of the illegal search. In the alternative, if we conclude defendant forfeited the argument related to the exploratory search, then defendant contends he was denied effective assistance of counsel. In a third argument, defendant asserts that the first search warrant did not establish probable cause to search his bedroom and lockbox. We affirm the judgment.

FACTUAL AND PROCEDURAL HISTORY

San Bernardino County Sheriff's Detective James Porter presented the following facts in his application for the first search warrant: On April 5, 2006, Jacob and his wife saw a trespasser on their property in Yucca Valley. Jacob went to talk to the trespasser and a struggle ensued. During the struggle, the trespasser stabbed Jacob in the chest multiple times. The trespasser told Jacob that he had consumed Jimsonweed tea, that he was insane, and that he had to kill Jacob. During the struggle, Jacob struck the trespasser on the side of his face with a rock, possibly hard enough to leave abrasions. Jacob was able to escape and run into his house.

Jacob described the trespasser as “a white male adult, approximately 16 to 20 years of age with shoulder length reddish brown hair, a small goatee and a dark colored or black hooded sweatshirt.” Jacob described the trespasser’s knife as a silver folding knife, with a slight curve in the blade and a skeleton-type handle that had holes that created a frame-like appearance. The night of the incident, deputies saw a person matching the trespasser’s description in the area of Onaga Drive and Alaba Avenue, but the person eluded the deputies.

The next morning, detectives located shoe prints that were determined to belong to the trespasser due to their position and direction. The detectives followed the shoe prints from the site of the stabbing to a residence on the corner of Onaga Drive and Alaba Avenue (the residence). The shoe prints were consistent with a person entering the residence and never leaving. As the detectives walked around the residence, defendant identified himself and said he lived at the residence. After detectives told defendant about their investigation, defendant provided a description of his brother, Andrew, which matched the description of the trespasser. The detectives located Andrew at his high school and found that he “very closely resemble[d] the physical description” of the trespasser. Andrew also had facial injuries consistent with being hit by a rock and small cuts on his knuckles consistent with a struggle.

While waiting for the search warrant to be served, defendant told detectives that Jimsonweed was growing in the back yard of the residence, and that Andrew knew how to make tea from the weed. Jimsonweed is a “powerful and unpredictable hallucinogen, consumption of which causes erratic/unusual behavior.”

In the warrant application, the detective sought permission to search the residence. Specifically, the detective requested to search “*all rooms, attics, basements, cellars, safes, vaults, briefcases, surrounding grounds, garages, storage rooms, trailers, vehicles, outbuildings of any kind, firearms, and ammunition, and all person(s) present at the location.*”

The warrant was for the purpose of locating the following property:

“(1) Silver folding knife of unknown make with ‘skeleton style’ handle[;]

“(2) Black or dark grey hooded sweatshirt and any other clothing, shoes, or personal items of any type containing suspected blood or bodily fluids[;]

“(3) Shoes of unknown make with a sole pattern consistent with suspect shoe tracks found at and around the crime scene[;]

“(4) Any and all evidence consistent with the ingestion of [Jimsonweed] including, but limited to [*sic*], [Jimsonweed] plants in any state, living or dead, and in any stages of drying, seeds, seed pods, brewing equipment such as coffee filters, tea pots, tea balls, strainers or other items that could be used to brew [Jimsonweed] tea and any other items that are determined to be used in the ingestion of [Jimsonweed] in any form[;]

“(5) Trace and transfer evidence such as blood drops, blood smears, hairs, bodily fluids and other biological evidence that may have been transferred to the person or clothing of the suspect during the commission of this crime and which may have subsequently been transferred to fixed or mobile objects at, or around, the suspect’s residence[; and]

“(6) Any and all documents, papers, bills, receipts, letters, utility bills, photographs, keys, ownership certificates, or property that tends to show the identity of the person(s) in control of the above listed location or items of evidence.”

The trial court issued the search warrant using the same descriptions given *ante*, from the warrant application. On April 6, 2006, the San Bernardino County Sheriff's Department executed the search warrant. At the time of execution, defendant's mother was at the residence. Detectives searched defendant's bedroom while simultaneously other detectives searched Andrew's bedroom. During the search, a detective brought defendant's mother a lockbox that was either 12 inches by 12 inches or 18 inches by 18 inches. Defendant's mother told the detective that the lockbox belonged to defendant. Defendant's mother had last seen the lockbox in defendant's bedroom, which is separate from Andrew's bedroom. Defendant's bedroom did not have a door, rather it had a blanket where a door might be. Defendant's mother told Detective Randy Warfield that she believed the only key to the lockbox was in defendant's possession, but she did not know if Andrew had access to the lockbox. Detective Warfield forced the lockbox open. Inside the box, Detective Warfield discovered “over 100” photographs of child pornography inside a file folder.

Defendant's bedroom contained “large quantities of electronic storage devices,” which Detective Warfield believed might contain additional evidence of child pornography. Detective Warfield sent another detective to apply for a second search warrant, because the first warrant did not authorize a search for pornography.

Detective Porter searched Andrew's bedroom. Two walls of the bedroom were covered with assorted edged weapons. The detectives believed the knife they were searching for had a three- to five-inch blade and a three- to five-inch handle. The house contained "dozens, if not hundreds, of knives." "[M]uch later in the day," after interviewing Andrew, Detective Porter discovered that the knife used in the stabbing of Jacob was displayed on the wall in Andrew's bedroom.

In regard to defendant's motion to suppress, the trial court found that people who share a house often have easy access to different rooms, and it was reasonable for the detective to look in the lockbox because it was large enough to contain the knife that the detectives were searching for. The court denied defendant's motion to suppress the evidence against him.

DISCUSSION

A. Exploratory Warrant

Defendant contends the trial court erred by denying his motion to suppress evidence against him because the first search warrant was exploratory. Defendant argues that the warrant was exploratory because it gave the deputies permission to search "everywhere inside and outside the . . . residence, including all trailers, vehicles, . . . and all persons present at the [residence]." ¹ We disagree.

¹ The People contend defendant forfeited this argument by failing to raise it at the trial court. Defendant contends that if the argument was forfeited, then he was denied effective assistance of counsel. We choose to address the merits of defendant's argument, because the issue is easily resolved. Due to our decision to address the

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“The standard of appellate review of a trial court’s ruling on a motion to suppress is well established. We defer to the trial court’s factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment.” (*People v. Glaser* (1995) 11 Cal.4th 354, 362.)

“The Warrant Clause of the Fourth Amendment categorically prohibits the issuance of any warrant except one ‘particularly describing the place to be searched and the persons or things to be seized.’ The manifest purpose of this particularity requirement was to prevent general searches. By limiting the authorization to search to the specific areas and things for which there is probable cause to search, the requirement ensures that the search will be carefully tailored to its justifications, and will not take on the character of the wide-ranging exploratory searches the Framers intended to prohibit. Thus, the scope of a lawful search is ‘defined by the object of the search and the places in which there is probable cause to believe that it may be found.’” (*Maryland v. Garrison* (1987) 480 U.S. 79, 84, fn. omitted.)

The search warrant essentially gave the detectives permission to search the entire residence, yard and any outbuildings located on the property. There was probable cause to search inside the house because the knife, clothing and Jimsonweed could be located anywhere in the house, and there was nothing indicating that Andrew’s access to the

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argument on its merits, we do not address defendant’s contention related to ineffective assistance of counsel.

house was restricted to a particular area. Further, there was reason to search the outside areas of the property because Jimsonweed was allegedly growing in the back yard. Further, there was reason to search any outbuildings, because the knife, clothes, or Jimsonweed could have been kept in an outbuilding. In other words, it was reasonable for the warrant to authorize a search of the entire property because there was reason to believe that the objects of the search could be located in various areas of the property. Therefore, the scope of the warrant was lawful, and the search was reasonable. Consequently, we conclude the trial court did not err by denying defendant's motion to suppress.

Defendant argues the warrant authorized an exploratory search because the detective's affidavit did not indicate that he knew where the incriminating evidence might be located inside the residence. We find this argument unpersuasive because the detectives could not be expected to know the precise location of the clothes, knife, Jimsonweed and other evidence. (*People v. Rogers* (1986) 187 Cal.App.3d 1001, 1009.) The shoe prints at the crime scene led to the residence, a suspect matching the trespasser's description was found to live at the residence, and therefore, it was reasonable to search the entire residence and surrounding property.

Next, defendant argues that the magistrate should have limited the search warrant so that defendant's bedroom and property would not be subject to the search. Contrary to defendant's position, "[a] search warrant for the entire premises of a single family residence is valid, notwithstanding the fact that it was issued based on information regarding the alleged illegal activities of one of several occupants of a residence." (*U.S.*

v. Ayers (9th Cir. 1991) 924 F.2d 1468, 1480.) The clothes, knife and Jimsonweed could have been hidden in any part of the residence. Thus, the warrant was not overbroad or unreasonable for authorizing a search of the entire residence.

B. Probable Cause

Defendant essentially contends the trial court erred by denying his motion to suppress evidence because the first warrant application was not supported by sufficient facts to establish probable cause to search defendant's bedroom or his property. We disagree.

“The magistrate issuing a warrant must make a practical, commonsense decision whether under all the circumstances set forth in the affidavit there is a fair probability that evidence of a crime will be found in a particular place. [Citation.] In reviewing the trial court's denial of a motion to suppress, we defer to the trial court's express or implied findings of fact that are supported by substantial evidence. [Citation.] We independently review the trial court's application of the law to those facts. [Citation.]” (*People v. Hale* (2005) 133 Cal.App.4th 942, 945.)

The probable cause statement in the warrant application states that shoe prints from the crime scene led to the residence, and a suspect who matched the description of the trespasser lived at the residence. Further, the suspect was allegedly under the influence of Jimsonweed, a powerful and unpredictable hallucinogen that can cause erratic and unusual behavior. Based upon these facts, a practical, commonsense conclusion would be that the suspect had entered the residence and possibly left evidence behind. Further, because the suspect was under the influence of a powerful

hallucinogen that causes erratic behavior, it would be reasonable to believe that the evidence could be located anywhere on the property. In sum, the affidavit set forth a fair probability that evidence of the stabbing could be found in defendant's bedroom. Accordingly, we conclude the trial court did not err by denying defendant's motion to dismiss.

DISPOSITION

The judgment is affirmed.

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/s/ MILLER
J.

We concur:

/s/ RICHLI
Acting P. J.

/s/ GAUT
J.